

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**HOSPICE OF MICHIGAN**

**Employer**

**and**

**CASE 7-RC-22100**

**UNITED STEELWORKERS OF AMERICA,  
DISTRICT 2, AFL-CIO/CLC<sup>1</sup>**

**Petitioner**

**APPEARANCES:**

Craig S. Schwartz, Attorney, of Bloomfield Hills, Michigan, for the Employer.  
Daniel McCarthy, of Southfield, Michigan, for the Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>2</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup>

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<sup>1</sup> The name of the Petitioner appears as amended at the hearing.

<sup>2</sup> The parties submitted briefs, which were carefully considered.

<sup>3</sup> The hearing was closed pending the receipt of Employer exhibit 21. Such was received and the hearing is closed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer, Hospice of Michigan, is headquartered in Detroit, Michigan and owns and operates hospice residential facilities in Farmington Hills and Grand Rapids, Michigan. In addition, the Employer maintains home-care teams in 17 other communities throughout the state.

The Petitioner seeks to represent a unit of approximately 26 full-time and regular part-time registered nurses (RNs), licensed practical nurses (LPNs), and home health aides (HHAS) employed at the Farmington Hills, Michigan facility. The Employer contends that the petitioned-for unit is inappropriate in that the RNs are supervisors within the meaning of Section 2(11) of the Act. Moreover, the Employer asserts that assuming, *arguendo*, the RNs are not supervisors, the unit as petitioned for is inappropriate because the unit combines only certain employees from three distinct employee groups: professional, technical, and service and maintenance employees. The Employer asserts that other employees at the facility from within each group must be included in the unit, meaning only a wall-to-wall bargaining unit is appropriate. There is no history of collective bargaining at the facility.

The Employer's president and chief executive officer is Dorothy E. Deremo. Reporting to Deremo is Carol Abdenauer, corporate director of patient services, and Rita Mahon, human resources manager. Cheryl Nicklay is the facility manager at Farmington Hills and is responsible for day-to-day operations.<sup>4</sup> Nicklay answers directly to Corporate Director of Patient Services Abdenauer.

The Farmington Hills facility is licensed by the State of Michigan as a 20-bed, non-acute adult foster care facility for terminally ill and adult foster care patients. The building is a single-story, double-winged structure. The care administered at the facility is specialized in that the patients are near the end of

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<sup>4</sup> The parties stipulated, and I find, that Nicklay is a supervisor under Section 2(11) of the Act based on her authority to hire, transfer, and lay off employees.

their lives. The care given encompasses patients' spiritual, mental, and physical needs. The facility operates 24-hours a day, 7 days a week.

The facility employs a total of about 45 full-time, part-time, and contingent employees, including 4 full-time RNs, 1 part-time RN, and 6 contingent RNs; 1 full-time LPN and 1 contingent LPN; 12 full-time HHAs and 4 contingent HHAs; 1 full-time social worker and 1 contingent social worker; 1 bereavement counselor; 1 spiritual counselor; and 1 dietitian;<sup>5</sup> 1 full-time maintenance person; 2 contingent housekeepers; 2 full-time kitchen persons<sup>6</sup> and 4 contingent kitchen employees; 1 receptionist; and 1 care coordinator assistant (CCA).

Upon hire and orientation at the corporate office, all employees are issued an employee handbook summarizing employment matters applying to employees at the Farmington Hills facility as well as the other facilities. The handbook contains a summary of benefits detailing which employees, based on their status as full-time, part-time, or contingent, receive what benefits. All full-time employees enjoy fringe benefits subject only to eligibility limitations of new employees. Such benefits include paid sick time, vacation time, six established and two floating holidays, up to five paid days of bereavement time, and paid jury duty; medical, dental, vision, life, long-term and short-term disability insurance coverage; and tuition reimbursement. All part-time employees qualify for vacation time if they are regularly scheduled to work at least 20 hours per week, and they also receive up to three paid days for the loss of an immediate family member. They do not qualify for holiday pay, but are compensated at one and one-half their rate of pay if they work on an actual or designated holiday. Contingent employees receive no benefits, though they too are paid one and one-half times their regular rate of pay when working on actual or designated holidays.

All employees are compensated pursuant to a pay range established by the corporate office, which determines a particular employee's starting wage/salary based on the employee's education and experience, and within the confines of a "pay matrix" used by the Employer that establishes 13 separate pay grades. Within each pay grade are specific employee classifications and a specific wage range. Housekeeping employees are grade one with an hourly pay range from \$7.70 per hour to \$10.00 per hour. The receptionist is a grade two employee with an hourly

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<sup>5</sup> The parties stipulated to the professional status of the social workers, the bereavement counselor, the spiritual counselor, and the dietitian based on their specialized courses of training and advanced educational degrees, and their consistent exercise of discretion and judgment in performing duties that are predominately intellectual and neither manual nor repetitive. Consequently, I find that these individuals are professional employees under Section 2(12) of the Act.

<sup>6</sup> The parties stipulated to the supervisory status of De'Angelo Davis as the food service manager based on her authority to make effective recommendations to hire employees. I find that Davis is a supervisor as defined under Section 2(11) of the Act.

pay range of \$8.47 to \$11.01. HHAs, Cooks, and the CCA are grade three employees with an hourly wage range of \$9.32 per hour to \$12.12 per hour. LPNs are grade five employees and earn an hourly wage rate of between \$11.81 per hour to \$16.54 per hour. RNs are grade eight employees earning an hourly wage rate between \$17.97 per hour to \$25.15 per hour.<sup>7</sup> Raises are pursuant to annual evaluations. The facilities manager conducts such reviews every March, and the evaluations are forwarded to human resources at the corporate office.

All employees at the Farmington Hills facility wear scrubs and nametags, regardless of their respective work classification. All employees use the same break room and rest room, and all park their vehicles in the same parking lot.

With respect to the RNs, LPNs, and HHAs (known collectively as patient caregivers) the facility operates two overlapping shifts; 7:00 a.m. to 7:30 p.m. and 7 p.m. to 7:30 a.m. Typically, two RNs are scheduled to work the day shift, unless the full-time LPN is working, then there is just one RN. The LPN typically works 3, 12-hour days and does not work the night shift. Three HHAs usually work the day shift and two HHAs work nights.

As to the remaining employees, the hours worked is dependent upon their job classification. The kitchen staff works from 7:00 a.m. to 6:00 p.m.; the housekeeper works from 7:00 a.m. to 3:30 p.m.; the building manager works from 9:00 a.m. to 6:00 p.m.; the CCA works from 7:00 a.m. until 3:30 p.m.; and the receptionist works from 9:00 a.m. to 5:30 p.m. Contingent employees' schedules are irregular in that they are scheduled to fill openings left in the schedules after full-time and part-time employees choose their days/hours in any given month. Contingents are also called in when needed for unplanned vacancies left by call-ins and no-shows.

The caregivers are permitted to "self schedule," that is, they are permitted to choose the dates they wish to report to work. To accomplish this, RN Mary Zaremski,<sup>8</sup> circulates to RNs and HHAs a blank sign-up sheet for a given month's

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<sup>7</sup> The wage rate schedules also list the annual salary range within each pay grade. The record does not specify which employees are paid hourly and which are paid salary, though the handbook, for purposes of allocating overtime, recognizes as "exempt" (salaried) all administrative, professional, and executive employees. All other employees are considered "non-exempt" or hourly employees.

<sup>8</sup> Since the Petitioner agrees with the Employer's position that RN Zaremski is a supervisor, no dispute remains as to her Section 2(11) status. Consequently, regardless of whether the remaining RNs are found to be supervisors, I find that Zaremski is a statutory supervisor based on her additional responsibilities to schedule employees and as the "preceptor" or trainer of newly hired RNs during their orientation period. Even after the orientation period, the other RNs continue to defer to Zaremski's judgment on patient care matters.

work schedule roughly one month in advance. The caregivers then select their respective work schedule for the month. Once circulated, the schedule comes back to Zaremski, who re-circulates the schedule with an attachment notifying the caregivers of any gaps in coverage. The caregivers revise their schedule so as to cover any such gaps, and Zaremski has the authority to adjust schedules if the employees cannot work out coverage.

The RNs are responsible for the overall patient care and work with the LPNs and HHAs to that end. The RN job description states that an “essential function” of the position is supervision of LPNs and HHAs. All RNs have graduated from professional schools of nursing and are licensed by the State of Michigan.<sup>9</sup> When a patient is admitted, the RN conducts a patient assessment prioritizing the needs and problems of the patient. For example, an RN will examine a patient’s skin, take his or her vital signs, and do a neurological assessment of the patient. A direct care plan is specifically designed by the RN to address the unique requirements of each patient. Other caregivers (both LPNs and HHAs) use the resulting direct care worker plan of action in treating the patient. The facility manager reviews neither the patient assessments nor the direct care plans.

The direct care plan provides detailed instructions to the caregivers regarding the personal care of a patient (bathing, hair care, shaving, dressing, oral care, nail care, laundry, and vital signs), mobility (transfers, positioning, exercising, safety), and skin/elimination/other (bladder, bowel movement, irrigate, other). The instructions set forth not only the frequency with which each of these tasks is to be performed, but also details as to how each task is to be performed. Thus, the care plan instructs the caregivers if bathing should be accomplished in a tub, in bed, or in a shower, and whether the patient can bathe independently. Under shaving, a caregiver is instructed whether to use an electric, disposable, or safety razor. As to safety, caregivers are advised whether bedside rails should be up, whether smoking should be supervised, and whether seizure or bleeding precautions should be observed. Under bowel movement, caregivers may be instructed whether to report color and consistency, to record the date of the last bowel movement, or whether the patient should use the toilet, a commode, a diaper, or a bedpan. The RN regularly updates the care plan as the patient’s needs and condition changes.

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<sup>9</sup> Although the Petitioner refused to stipulate to the professional status of the RNs, the Board has traditionally found registered nurses to be professional employees and licensed practical nurses to be non-professional. *Centralia Convalescent Center*, 295 NLRB 42 (1989). The record in the instant case presents insufficient reason to depart from this conclusion.

In the course of their professional duties, RNs administer medication to patients. In doing so, they are governed by the physician's standing orders as detailed in the medication administration record, and certain "protocols" specific to certain medical conditions such as wound treatment, bedsores, or constipation. These standing orders and protocols also provide guidance to the RNs in developing the individual patient care plans from which HHAs derive their duties. RNs are also responsible for attaching central and intravenous lines to patients. Finally, RNs spend significant time performing duties typically performed by other caregivers, including giving patients baths, changing bed linen, and changing diapers.

Facility Manager Nicklay testified that in the course of their duties, RNs direct the work of LPNs and HHAs in two ways. First, in drafting the patient care plans, RNs set forth specific directives to which LPNs and HHAs are required to adhere. Second, RNs are authorized to orally direct LPNs and HHAs in the fulfillment of their respective duties. Nicklay testified that such directives are not subject to her review. With respect to direct care plans, LPNs may draft the patient care plans, but such would be subject to RN approval. Moreover, RNs review the work of the HHAs and inspect a standardized checklist containing various general tasks that the HHAs check off as each task is completed for each patient.

In contrast, RN Mary Zaremski testified her assignment of HHAs is much more circumscribed. She meets with the three HHAs prior to the start of their day shift to determine if they are satisfied with their daily patient load. Some patients require greater care, and to balance the caseloads Zaremski testified she would adjust the schedules of the HHAs accordingly. Additionally, some patients are more comfortable with certain HHAs and vice-versa, and patient loads reflect such preferences. Another RN, Cheryl Buswell-Robinson, who works the night shift, testified she is the only RN at the facility on her scheduled workdays. The two HHAs employed on night shift do not require direction. Rather, their assignments are determined during "report," when the caregivers from the preceding shift share useful patient information with the oncoming shift. According to Buswell-Robinson, the job duties of HHAs are to an extent determined by the care plan. RN Cherie Thurner, testified that on the day shift she does not direct the work of the HHAs; rather, a discussion takes place between the RN and the HHAs where they agree to the proper course of action and the distribution of work.

RNs have the authority to cover staff shortages by either calling in HHAs or by authorizing additional hours for HHAs, which may sometimes require the payment of overtime. There exists no pre-approved list of employees from which the RN is guided as to who should be called or the order employees are to be called. With the exception of a few weeks in the late spring-early summer 2001 because of budget problems, RNs have the authority to call a staffing agency when

staff shortages cannot be filled from within. If an agency is called, the RN may request or refuse particular temporary employees. RNs approve hours submitted by the temporary agency for purposes of invoicing and payment. RN Thurner testified that she is required to cover staffing shortages at least once a month.

RNs do not have the authority to hire, fire, discipline, promote, or transfer employees, or effectively recommend such. RNs cannot grant wage increase to the nursing staff, as discussed above. However, in the absence of the facility manager, RNs have the authority, which on rare occasion they have exercised, to send home HHAs for blatant insubordination in the performance of their patient care responsibilities.

Section 2(3) of the Act excludes from the definition of the term “employee” “any individual employed as a supervisor.” Section 2(11) of the Act defines a “supervisor” as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be interpreted in the disjunctive and the possession of any one of the authorities listed in that section places the employee invested with this authority in the supervisory class. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949); *Allen Services Co.*, 314 NLRB 1060 (1994).

On May 29, 2001, the Supreme Court issued its decision in *NLRB v Kentucky River Community Care*, 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001), wherein the Court upheld the Board’s longstanding rule that the burden of proving Section 2(11) supervisory status rests with the party asserting it. See *Ohio Masonic Home*, 295 NLRB 390, 393 fn.7 (1989); *Bowen of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). However, the Court rejected the Board’s interpretation of “independent judgment” in Section 2(11)’s test for supervisory status, i.e., that registered nurses will not be deemed to have used “independent judgment” when they exercise “ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards.” 121 S.Ct. at 1863. Although the Court found the Board’s interpretation of “independent judgment” in this respect to be inconsistent with the Act, it recognized that it is within the Board’s discretion to determine, within

reason, what scope or degree of “independent judgment” meets the statutory threshold. See *Beverly Health & Rehabilitation Services*, 335 NLRB No. 54 (Aug. 27, 2001). However, the Court did agree with the Board in that the term “independent judgment” is ambiguous as to the *degree* of discretion required for supervisory status and that such degree of judgment “that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer.” 121 S.Ct. at 1867. In discussing the tension in the Act between the Section 2(11) definition of supervisors and the Section 2(12) definition of professionals, the Court also left open the question of the interpretation of the Section 2(11) supervisory function of “responsible direction,” noting the possibility of “distinguishing employees who direct the manner of others’ performance of discrete tasks from employees who direct other employees.” 121 S.Ct. at 1871. See *Majestic Star Casino*, 335 NLRB No. 36 (Aug. 27, 2001).

For instance, direction as to a specific and discrete task falls below the supervisory threshold if the use of independent judgment and discretion is circumscribed by the superior’s standing orders and the employer’s operating regulations, which require the individuals to contact a superior when anything unusual occurs or when problems occur. *Dynamic Science, Inc.*, 334 NLRB No. 56 (June 27, 2001); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

The record in the instant case is clear that RNs devise direct care plans of action tailored to specific patients based on their own initial assessments of the patients. These assessments are not subject to review by other management officials and they provide precise, detailed instructions to the LPNs and HHAs as to the care and treatment of patients. See *Beverly Health & Rehabilitation Services*, supra., slip op. at pg. 36, wherein RN charge nurses, who were admitted supervisors, provided similar instructions to LPNs, whose supervisory status was in dispute. Even assuming that RNs defer their exercise of authority to assign particular work to specific caregivers, and instead on occasion allow the caregivers themselves to decide which patients or tasks to perform, their directives as to each patient are nevertheless predetermined by the RN’s independent assessment of the patient’s needs and requirements. In addition, RNs inspect and approve HHA report sheets, which are used to ensure that patient care tasks are completed by the caregivers. That RNs must administer medication according to a physician’s standing orders and are guided in treating certain patient conditions by protocols does not detract from the independent judgment the RNs exercise in translating those orders and policy into specific plans of care.

Further supporting this finding of supervisory status are certain secondary indicia, such as the RNs covering for staff shortages by having employees stay past their scheduled work hours, calling in off-duty employees, or contacting an



independent staffing agency without guidance from or approval by management. Furthermore, RNs may send employees home for blatant insubordination, and for substantial periods of the workday are the highest ranking employees on the premises. *Mid-America Care Foundation v. NLRB*, 148 F.3d 638 (6<sup>th</sup> Cir. 1998).

Accordingly, I find RNs at the Employer's Farmington Hills facility to be Section 2(11) supervisors.

If the RNs are excluded from the unit, the Employer agrees with the Petitioner that other professionals at the facility need not be included in the petitioned-for unit. Consequently, the issue concerning the inclusion of social workers, bereavement counselor, spiritual counselor, and dietitian need not be decided.

However, the Employer nevertheless asserts that an 18-person unit consisting of LPNs and HHAs must also include all other nonprofessional employees (approximately 10) at the facility, including kitchen, maintenance, and housekeeping employees, the receptionist, and the care coordinator assistant.

LPNs and HHAs are the primary caregivers at the facility who tend to basic patient needs as set forth in the care plans previously described, such as grooming, oral care, changing diapers and bed linens, and so forth. The facility also provides patients with three meals per day, prepared on site by Food Service Manager De'Angelo Davis, one full-time cook, Fay Holt, and four contingent kitchen staff. Food preparation occurs in the kitchen, which is located in the front center of the two-winged facility. Because meals are patient specific, the kitchen staff receives feedback from the day shift caregivers and the dietitian regarding diet changes, meal substitutions, and special requests. For example, if a patient has difficulty swallowing food, the caregivers would request that the food be pureed. Caregivers also either deliver meals directly to the patient's room from the kitchen or escort patients to the dining room as necessary. Along with kitchen staff, caregivers help feed patients in the dining room who need assistance.

The facility employs one full-time maintenance employee, Terry Antineau, who has the job title of "building manager." Antineau is salaried and earns approximately \$29,000 a year. She has an office on-site and is primarily responsible for the overall maintenance of the facility, physically performing maintenance and repair work within the scope of her abilities, and calling vendors to address those maintenance and repair issues beyond her capabilities. She also cleans the facility when no housekeeper is on duty, moves furniture in patient rooms, and troubleshoots basic medical devices, such as nurse call lights. Antineau reports directly to Facility Manager Nicklay. Though Antineau has no authority to hire, fire, discipline, transfer, recall, or promote employees, the

housekeepers report directly to her. Although supposedly Antineau does not direct the activities of the housekeeping staff, who instead get their instructions from a standardized cleaning schedule, the record does not state the origin or author of this schedule.

The one full-time housekeeper and two contingent housekeepers are responsible for cleaning the facility, including the patients' rooms and the bathrooms.

The one care coordinator assistant (CCA) at the facility is Elaine Winger, who has an office located near the entrance of the facility. Winger is responsible for matters concerning patient admissions, including patient arrivals and medical supply delivery. She also takes care of patient charts, meets with the family members of admitting patients and conducts tours of the facility. Finally, she does some scheduling when the facility is short staffed.

The Employer employs one receptionist, Corrine Aguilar. Aguilar is stationed at a reception desk near the front entrance and next to the nurses' station. Aguilar's job duties include answering the telephone, greeting visitors and guests, photocopying documents, and stocking the photocopy machine. She also performs minor clerical work such as typing death certificates. Finally, she conducts tours of the facility.

In considering the appropriateness of a bargaining unit, Congress instructed the Board to make unit findings so as "to assure to employees the fullest freedom in exercising the rights guaranteed by this Act." 29 U.S.C. §159(b). It is axiomatic that nothing in the Act requires a bargaining unit to be the *only*, or the *ultimate*, or the *most appropriate* grouping. **Overnite Transportation Co.**, 322 NLRB 723 (1996); **Capital Bakers**, 168 NLRB 904, 905 (1967); **Morand Bros. Beverage Co.**, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7<sup>th</sup> Cir. 1951). A union need not seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible with the union's request does not exist. **Purity Food Stores**, 160 NLRB 651 (1966); **P. Ballantine & Sons**, 141 NLRB 1103 (1963). A union's desire is always a relevant, although not a dispositive, consideration. **E. H. Koester Bakery & Co.**, 136 NLRB 1006 (1962).

In the health care industry, the Board has sought to limit the proliferation of bargain units through case law and its rulemaking to achieve that end. In **Park Manor Care Center**, 305 NLRB 872, the Board set forth the empirical community of interest test for determining appropriate bargaining units in non-acute health care facilities wherein it considers community of interest factors as well as those factors considered relevant by the Board in its rulemaking proceedings on collective bargaining units in the health care industry. In **Park Manor**, the

petitioner sought a unit of service and maintenance employees, excluding technical employees. The Board indicated that factors to be examined in making the unit determination included education and training, pay comparisons, distinct functions, contact with other employees, and the relative size of the technical employee group. The rationale with respect to nursing home units stems from the fact that employees at smaller health care facilities such as nursing homes typically have more contact and share more interests with other employees, than do employees at larger hospitals.

“Unlike hospitals, nursing homes are populated primarily by the elderly and provide long term care rather than medical treatment of a specific illness. Consequently, nursing home staff is concerned not only with their residents’ physical well-being but also their social and psychological needs. Accordingly, there is less diversity in nursing homes among professional, technical, and service employees, and the staff is more functionally integrated. Indeed, almost no aspect of nursing home care is in the exclusive domain of any one group of employees. Thus, there appears to be a greater overlap of functions as well as greater work contact between the various nursing home non-professionals.” 53 Fed. Reg. 33928, 284 NLRB 1567, (1987).

Here, the Petitioner seeks to include LPNs, considered technical employees<sup>10</sup> with HHAs, typically considered service and maintenance employees, while excluding other employees who typically are categorized as service and maintenance employees. The community of interests shared by all service and maintenance employees in this relatively small unit is evident. For example, all service and maintenance employees are paid hourly and range in grades from one to three. All full-time employees receive similar benefits, including paid vacations and sick time; health, dental, vision, and life insurance; and tuition reimbursement. All employees wear the same uniforms, park in the same parking lot, and share the same break room. All receive annual reviews and wage increase from the facility manager.

LPNs and HHAs regularly clean patients’ rooms and pick up trash, jobs also performed by housekeepers. HHAs and the kitchen staff interact during meal preparation and distribution to patients. The receptionist greets visitors and guests, provides tours of the facility, and is responsible for certain patient clerical functions. The CCA provides patient admission services, has patient charting responsibilities, is occasionally involved in scheduling caregivers, and conducts

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<sup>10</sup> See 53 Fed. Reg. 25146, 284 NLRB 1515, 1521.

tours of the facility.<sup>11</sup> These duties by the receptionist and the CCA, and the small size of the facility, put them in regular contact with caregivers. The one maintenance employee at the facility, Antineau, has access to all parts of the facility and contact with both patients and unit employees as part of her general duties, which sometime overlap those of the housekeeping employees.<sup>12</sup>

Consequently, a unit limited to caregivers alone, to the exclusion of other nonprofessional employees at the facility, is inappropriate. See e.g. *Brattleboro Retreat*, 310 NLRB 615 (1993); *Bay St. Joseph Care Center*, 275 NLRB 1411 (1985); *Menninger Foundation*, 219 NLRB 690 (1975); *Mount Airy Psychiatric Center*, 217 NLRB 802 (1975).

5. For the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act.<sup>13</sup>

All full-time, regular part-time, and contingent<sup>14</sup> non-professional employees employed by the Employer at its Farmington Hills, Michigan facility; but excluding professional employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

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<sup>11</sup> Records suggest that Winger may be paid a salary well above the grade three level normally paid a CCA. However, I find this insufficient reason to exclude her from the unit that would otherwise include all other non-professional employees at the facility.

<sup>12</sup> Although I have found the maintenance position properly within the broad nonprofessional unit found appropriate herein, the failure of the record to definitively resolve Antineau's supervisory status means she may vote subject to challenge by any party.

<sup>13</sup> The Petitioner has indicated its desire to proceed to an election even if the Regional Director determines a unit other than that petitioned-for is appropriate.

<sup>14</sup> By agreement of the parties, the eligibility of contingent employees is subject to the eligibility formula set forth in *Davison-Paxon Co.*, 185 NLRB 21, 24 (1970). Contingent HHA Taleia Collins, whose hours have been limited by her pregnancy leave, my vote subject to challenge by any party.

Dated at Detroit, Michigan this 21st of November, 2001.

(SEAL)

/s/ William C. Schaub, Jr.

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